

### **REMARKS**

Claims 1-7 are now currently pending in the present application. Claim 8 has been cancelled herein. Claim 1 has been amended, support for which may be found in the present specification, at least, at page 7, lines 23-25. No new matter has been added by way of the present claim amendments.

#### ***Claim Objection***

Claim 8 stands objected to as being a substantial duplicate of claim 7. Accordingly, claim 8 has been cancelled in the present response. Applicants respectfully request withdrawal of the outstanding claim objection.

#### ***Rejection Under Provisional Obviousness-type Double Patenting***

Claims 1-8 stand provisionally rejected under nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending US Application 11/060,775.

In response to this provisional rejection, Applicants request that the Examiner hold this provisional rejection in abeyance until allowable subject matter is achieved in one application, and then make the rejection nonprovisional in the other application. This is the procedure recited in the M.P.E.P. § 804.

#### ***Rejections Under 35 U.S.C. § 103(a)***

Claims 1, 2, and 5-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 5,023,052 to Nagatomo et al. (hereinafter "Nagatomo").

Claims 2 and 5-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagatomo.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagatomo in view of USP 4,824,639 to Hildenbrand et al. (hereinafter "Hildenbrand").

Applicants respectfully traverse each of the outstanding rejections.

Applicants have amended present claim 1 to recite:

A multilayer analysis element for liquid sample analysis wherein at least one functional layer and at least one porous liquid sample spreading layer of non-fibrous porous film are integrally laminated in this order on one side of a water-impermeable planar support, and

the non-fibrous porous film has a bending rupture strength of 20 gram-weight or more and a tensile percentage of 2% or less when the film is stretched with a tensile force of 50 gram-weight; and

*wherein the outermost layer is the porous liquid sample spreading layer of non-fibrous porous film.* (emphasis added)

Nagamoto discloses an analytical element comprising a support; a water absorbing layer; the reagent layer (first non-fibrous porous layer); the blood cell filtering layer (second non-fibrous porous layer); and the developing layer (spreading fibrous porous layer). *See* Nagamoto, Figure 1 and Example 1. In particular, a three layer structure comprising the reagent layer (first non-fibrous porous layer); the blood cell filtering layer (second non-fibrous porous layer); and the developing layer (spreading fibrous porous layer) is essential to the Nagamoto analytical element.

However, the present invention differs from Nagamoto, at least, in that the porous liquid sample spreading layer (which corresponds to the Nagamoto fibrous porous layer) is a non-fibrous porous film.

Hildenbrand does not serve to cure the deficiency of Nagamoto.

Accordingly, given the noted distinction between the present invention and Nagamoto, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Moreover, in view of the foregoing, Applicants believe the pending application is in condition for allowance. A Notice of Allowance is earnestly solicited.

Application No. 10/589,556  
Amendment dated April 9, 2009  
Reply to Office Action of January 9, 2009

Docket No.: 2870-0341PUS1

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Monique T. Cole, Reg. No. 60,154 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: April 9, 2009

Respectfully submitted,

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